

HOUSE BILL 1726

By Sargent

AN ACT to amend Tennessee Code Annotated, Title 5;
Title 6; Title 7; Title 12, Chapter 4 and Title 62,
relative to public works.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 12, Chapter 4, Part 1, is amended by
adding the following language as a new section:

(a) As used in this section:

(1) "Designer" means a construction design professional under contract
with a state agency; and

(2) "State agency" means the University of Tennessee, the board of
regents, or the state of Tennessee real estate and asset management
(STREAM) division of the department of general services.

(b) At the designer's sole discretion, a designer who has approved design fees
for the program phase, schematic design phase, design development phase,
construction document phase, and bidding and negotiation phase may invoice the state
agency on a monthly basis to be paid by the state agency either:

(1) On a percentage-of-completion basis for a particular phase; or

(2) In an amount prorated over the anticipated time required to complete
a particular phase.

(c) If the designer elects to invoice the state agency on a monthly basis for
design fees, the state agency shall pay the designer in accordance with the Prompt Pay
Act of 1985, compiled in chapter 4, part 7 of this title; except, that the state agency shall
pay the designer within thirty (30) days of being properly invoiced.

(d) Payments to the designer on account of the basic construction contract administration services fee shall be made as follows:

(1) Beginning with the issuance of the general contractor's notice to proceed, ninety-five percent (95%) of the basic construction contract administration services fee shall be payable in equal monthly portions based on the number of months in the construction schedule to reach substantial completion;

(2) When the certificate for substantial completion has been executed by the designer pursuant to the general conditions of the contract, partial payment shall be made in a sum sufficient to increase payment to ninety-five percent (95%) of the basic construction contract administration services fee; and

(3) When the certificate for final payment has been executed by the designer and the designer has completed all requirements of the contract, including the furnishing of record documents, final payment shall be made in the sum sufficient to increase payment to one hundred percent (100%) of the basic construction contract administration services fee.

SECTION 2. Tennessee Code Annotated, Title 12, Chapter 4, Part 1, is further amended by adding the following language as a new section:

(a) As used in this section:

(1) "Designer" means a construction design professional under contract with a state agency; and

(2) "State agency" means the University of Tennessee, the board of regents, or the state of Tennessee real estate and asset management (STREAM) division of the department of general services.

(b) The use of building information modeling (BIM) on a design and construction project shall not result in increased fees, and BIM deliverables at the minimum levels of development that are equivalent to or less than the American Institute of Architects (AIA)

level of development (LOD) 300 may be included in the basic services fee. The state agency is encouraged to review all contract requirements prior to issuance of the request for qualifications for the potential cost impact that may be associated with unique modeling or data requirements.

(c) BIM deliverables at a higher level of development required by the state agency, above the AIA LOD 300, shall not be included in the designer's basic services fee, and the designer shall be provided with additional compensation for providing BIM at a higher level of development above LOD 300.

(d) Requests for additional embedded data in a model, such as COBie or other formats, whether data-based or geometrically based, shall result in additional services fees to compensate for the level of effort required.

(e) If the state agency requires software licenses, the costs shall be included as reimbursable expense to the designer.

(f) The designer shall be compensated with additional services fees for further model development and enhancement during the construction phase, but shall not be compensated additional services fees for typical as-built or post-construction documentation requirements. Specific management or coordination requirements of contractor models, by the designer, may be negotiated as necessary through specific project requirements. Standard industry-wide BIM LOD shall be as defined by the latest documents issued by the AIA.

(g) Additional services shall not be included in basic services and shall be paid by the state agency to the designer as extra compensation. The following industry standard and approved additional services, if provided by the designer to the state agency, shall result in additional compensation to a designer:

(1) Feasibility studies and analyses;

- (2) Value analysis and life cycle cost analysis;
- (3) Assistance with grant and funding applications;
- (4) Facility programming;
- (5) Master planning;
- (6) Soils investigations and reports and geotechnical services;
- (7) Surveys such as topographic, boundary, vegetation improvements, or utilities;
- (8) Existing facilities analysis;
- (9) ADA compliance consultant-independent consultant if required by the state;
- (10) Revisions required by new codes, laws, or regulations after completion of design work;
- (11) Measured drawings of existing facilities;
- (12) Environmental assessments;
- (13) Storm water management permitting;
- (14) Environmental and site permitting;
- (15) Clean room certification;
- (16) Agricultural consultant;
- (17) Storm water third-party reviews for municipal separate storm sewer system (MS4) locations;
- (18) Detention and water quality analysis (Engr-3)-beyond basic services requirements;
- (19) Technology special equipment consultant;
- (20) Vibration analysis consultant;

- (21) Electromagnetic interference (EMI) and RF interference (RFI) analysis;
- (22) Radon surveys;
- (23) Food service consultation;
- (24) Theater consultation;
- (25) Acoustical consultation;
- (26) Audio/visual consultation;
- (27) Exhibit design;
- (28) Landscape and irrigation consultation;
- (29) Interior design, furnishings, plantscaping, and artscaping;
- (30) Site-specific seismic studies;
- (31) Comprehensive CPM scheduling;
- (32) Documents prepared and services performed during any and all design phases for multiple component construction packages;
- (33) Documents prepared and services performed during any and all design phases for separate proposal packages requested by the state agency;
- (34) Computer-modeled energy analysis other than required by building code;
- (35) Traffic analysis;
- (36) Hazardous materials consultation and surveys;
- (37) Renderings, models, and video animations;
- (38) Changes to scope, size, or complexity;
- (39) Commissioning;
- (40) Commissioning support;
- (41) Commissioning-witnessing functional performance tests;

- (42) Environmental IEQ/IAQ commissioning;
- (43) Leadership in Energy and Environmental Design (LEED) process support;
- (44) Full-time construction inspection provided by the designer;
- (45) Program management services;
- (46) Designing replacement work for damaged work;
- (47) Post-occupancy observations and evaluations;
- (48) Facility operation services, such as operation and maintenance manual training coordination;
- (49) Load studies, either mechanical or electrical, requiring metering or beyond the immediate renovation area;
- (50) Reliability analysis, either mechanical or electrical;
- (51) Phased construction;
- (52) Environmental work, which requires a hazardous waste consultant hired by the designer;
- (53) Zoning board meetings;
- (54) Nonstate government hearings or meetings, if requested by the state agency;
- (55) Other specialty design consultants;
- (56) BIM above LOD 300, as defined by the AIA;
- (57) Facilities management services including, but not limited to, developing database information;
- (58) Graphic design and branding;
- (59) Material revisions in documents inconsistent with written approvals or instructions;

(60) Services required by general contractor or subcontractor defects requiring significant investigation or redesign;

(61) Services necessary to verify the accuracy of drawings or other information furnished by the state agency;

(62) Extensive construction services caused by significant general contractor, subcontractor, or state agency impact;

(63) Providing record documents beyond the requirements in the designer's manual; and

(64) Services required as a result of default of a general contractor or subcontractor.

SECTION 3. This act shall take effect July 1, 2016, the public welfare requiring it, and shall apply to any contract entered into or renewed on or after July 1, 2016.